

Claimant requests review of the nature and extent of her impairment in each of the docketed claims. Claimant contends the ALJ erred in adopting the opinions of the independent medical examiner “in toto” and failed to consider the opinions of claimant’s

expert physician, Dr. C. Reiff Brown. In both claims, claimant urges the Board to modify the ALJ's award consistent with the impairment assessments assigned by Dr. Brown.

Respondent argues that the ALJ's Award in Docket no. 1,036,861 should be affirmed but that the Award in Docket No. 1,036,862 should be modified to comport with Dr. Baughman's findings that claimant bears no permanent impairment to her knee as a result of the September 14, 2007 accident but otherwise, the ALJ's Award should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

The Board finds that the ALJ's Awards set out the facts and circumstances surrounding claimant's accidents, her diagnosis and treatment to be detailed, accurate, and supported by the record. The Board further finds that it is not necessary to repeat those facts and circumstances in this Order except as to explain the Board's findings.

Claimant alleges she was injured in two separate compensable accidents. Pursuant to the parties' agreement, the first accident occurred on March 22, 2007¹ and allegedly involved the upper extremities and neck as a result of claimant's repetitive work activities.² The second accident occurred September 14, 2007³, and allegedly involves claimant's left knee and low back and stems from an accident whereby an animal carcass struck or fell⁴ on claimant. The only issue to be considered in this appeal is the nature and extent of claimant's impairment arising out of each of these accidents.

Claimant's physical complaints (which she attributes to the accidents above) are ongoing and cover both hands, arms, shoulders, neck, low back and left knee. Claimant testified that at times, her pain is so great she passes out.⁵ According to her regular hearing testimony, her pain is regularly at a 5-6 or above on the pain scale (with 10 being

¹ This accident is the basis for Docket No. 1,036,861.

² Application for Hearing (E-1) filed Oct. 4, 2007.

³ This accident is the basis for Docket No. 1,036,862.

⁴ At various points in the record, there are suggestions that the carcass struck claimant whereas at other times the accident is described as a carcass falling on claimant.

⁵ R.H. Trans. at 15.

the highest). Nonetheless, claimant continues to work for respondent. Her treatment has largely been conservative in nature. She did undergo a right carpal tunnel release, but claimant indicated that procedure did not improve her complaints. Her post-surgical EMG showed no nerve damage or further evidence of carpal tunnel syndrome. She has had an MRI and an arthroscopic procedure to her left knee both of which revealed no structural problems and did not required any surgical repair. MRIs on both shoulders revealed only minor degenerative changes and no evidence of impingement syndrome or rotator cuff tear.⁶

Docket No. 1,036,861

With respect to the first claim, Dr. Pat Do, an orthopaedic surgeon, was asked (by respondent) to rate claimant's bilateral shoulder complaints. He opined that claimant sustained a 10 percent permanent partial impairment to each shoulder based solely upon her range of motion deficits. His report did not offer any explanation as to the mechanism of injury, nor how this impairment rating was connected to claimant's work activities. But respondent does not argue that this condition is not related to claimant's work activities.

Dr. C. Reiff Brown examined claimant at her counsel's request, and outlined a great number of claimant's physical complaints which included both upper extremities, her neck and upper back, and myofascial complaints. Dr. Brown ultimately assigned a combined 25 percent whole body permanent partial impairment as a result of the March 22, 2007 injury. This rating includes a 10 percent permanent impairment to the right shoulder and an 11 percent permanent impairment to the left. The balance of the rating is for her bilateral carpal tunnel complaints, myofascial pain syndrome, a lumbar impairment (due to a limp which is due to the *other* docketed claim) and impairment to the knee (which is again due to the *other* docketed claim).

Dr. Vito Carabetta, the ALJ's independent medical examiner, reviewed claimant's medical records and assessed the entirety of claimant's constellation of complaints. He ultimately assigned a 10 percent to the right forearm for the carpal tunnel surgery, but nothing more as a result of the first accident. Suffice it to say, that other than subjective complaints, Dr. Carabetta found no objective signs of permanency in claimant's upper extremities, her shoulders, neck or mid back. He found no evidence of spasms or anything but self limiting behavior and verbal complaints of pain.

Docket No. 1,036,862

Turning now to the second accident, Docket No. 1,036,862, claimant's left knee complaints were treated by Dr. Michael J. Baughman. Dr. Baughman initially treated

⁶ *Id.*, Cl. Ex. 1 at 6 (Dr. Carabetta's May 28, 2009 IME Report at 5).

claimant's left knee complaints conservatively. But when her complaints continued he performed a diagnostic procedure on claimant's left knee. And although not included in Dr. Baughman's report, it appears from the other physicians' reports that the arthroscopic procedure that he performed yielded negative results and no surgical repair was required for claimant's knee. He ultimately rated claimant's knee at zero (0) percent impairment.

Dr. Carabetta was asked (by the ALJ) to conduct an independent medical examination of claimant and like Dr. Baughman, he did not find any significant problems with either claimant's low back or her left knee. He did, however, give claimant the "benefit of the doubt" and assigned a 1 percent impairment to the knee and zero (0) percent impairment to the low back.

Dr. Brown evaluated claimant's left knee and low back complaints and assigned a 20 percent to the lower extremity (knee) and a 5 percent to the lower back. Although no one questioned him about it, it appears that his rating as to this injury may well duplicate the ratings offered in the other docketed claim as his report reflects a 5 percent rating to the lumbar spine for a "limp" and 5 percent impairment to the left lower extremity for "ligamentous laxity of the lateral collateral ligament".⁷

After considering both injuries and the evidence bearing on the issue of claimant's resulting impairment, the ALJ adopted the opinions of Dr. Carabetta as her own. In doing so, she expressly found that Dr. Carabetta's opinions were most reliable and that he had performed the most recent evaluation of claimant's condition and her complaints.⁸ Thus, she awarded claimant a 10 percent to the right forearm in Docket No. 1,036,861 and a 1 percent to the left knee in Docket No. 1,036,862.

The Board has considered the parties' arguments, particularly claimant's counsel's suggestion that the ALJ failed to consider Dr. Brown's opinions, and concludes the ALJ's Awards should be affirmed in part and modified in part.

The ALJ specifically noted Dr. Brown and his opinions and quite obviously was more persuaded by the opinions of her own independent medical examiner. Thus, it simply cannot be said, under this record, that she did not consider his evaluation or opinions in this matter. However, after its review of the evidence, the Board is persuaded that claimant bears a permanent partial impairment to her shoulders rather than to her right upper extremity. Dr. Do was retained by respondent and rated claimant's impairment at 10 percent to each upper extremity at the shoulder level. Claimant most certainly has voiced consistent complaints about her upper extremities (along with a host of other complaints).

⁷ *Id.*, Cl. Ex. 1 at 11 (Dr. Brown's Dec. 4, 2008 IME report at 3).

⁸ ALJ Award (Jan. 20, 2010 at 4 (in both docketed claims)).

And Dr. Brown's examination report indicates that he found bilateral crepitus on active range of motion testing.⁹ Yet, when Dr. Carabetta examined claimant's shoulders, he found no permanency, no range of motion issues, no atrophy or spasms.

Here, the Board believes it is more probably true than not that claimant sustained permanent impairment to her shoulders as a result of her repetitive work activities (in Docket No. 1,036,861) and that that impairment lies somewhere in between the two ratings offered by Drs. Carabetta and Do. Thus, the Board finds claimant bears a 5 percent permanent partial impairment to each upper extremity at the level of the shoulder. Thus, the Award in Docket No. 1,036,861 is modified to reflect this finding.

Nonetheless, the Board is simply not persuaded that claimant has any impairment as a result of her carpal tunnel surgery, as her EMG results were normal following that surgery. Thus, the Board declines to award any permanency for claimant's right hand complaints and the Award in Docket No. 1,036,861 is modified to reflect this finding. Nor is the Board persuaded that claimant has myofascial pain or neck or upper back impairment as opined by Dr. Brown. Accordingly, the Award in Docket No. 1,036,861 is affirmed as to these findings.

As for Docket No. 1,036,862, the claim involving the left knee and the low back, the Board finds the ALJ's Award should be affirmed in part and modified in part. The Board is not persuaded by Dr. Brown as it relates to his opinions on claimant's low back and left knee impairments. Claimant has had a number of diagnostic procedures all of which have revealed no structural problems or defects. Dr. Carabetta's evaluation of her condition revealed a litany of complaints, but there was no objective findings to substantiate claimant's complaints or explain her ongoing problems. He found no crepitus, no clicking of the knee joint, no evidence of ligamentous laxity, no tenderness in the low back, no paraspinal muscle spasms or specific point tenderness. Even Dr. Baughman, who was treating claimant and her knee complaints assigned a 0 percent impairment for her knee complaints.

Given all this evidence, the Board is not persuaded that claimant established it is more probably true than not that she sustained permanent injury as a result of her work-related injury on September 14, 2007. The parties agreed that she sustained an accident on that date, but the Board finds she has failed to prove her resulting impairment. Accordingly, the ALJ's Award is modified to reflect the Board denying claimant an award for permanency in Docket No. 1,036,862.

⁹ R.H. Trans., Cl. Ex. 1 at 11 (Dr. Brown's Dec. 4, 2008 IME report at 2).

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Awards of Administrative Law Judge Pamela J. Fuller dated January 20, 2010, are affirmed in part and modified in part as follows:

DOCKET NO. 1,036,861

The claimant is to 11.25 weeks of permanent partial disability compensation, at the rate of \$305.56 per week, in the amount of \$3,437.55 for a 5 percent loss of use of the right shoulder, making a total award of \$3,437.55.

The claimant is to 11.25 weeks of permanent partial disability compensation, at the rate of \$305.56 per week, in the amount of \$3,437.55 for a 5 percent loss of use of the left shoulder, making a total award of \$3,437.55.

All other findings and conclusions contained within the ALJ's Award are hereby affirmed to the extent they are not modified herein.

DOCKET NO. 1,036,862

Compensation for permanency in this docket is denied. All other findings and conclusions contained within the ALJ's Award are hereby affirmed to the extent they are not modified herein.

MAGDALENA N. GARRES

7

**DOCKET NOS. 1,036,861
1,036,862**

IT IS SO ORDERED.

Dated this _____ day of May 2010.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Stanley R. Ausemus, Attorney for Claimant
Abigail L. Pierpoint, Attorney for Self-Insured Respondent
Pamela J. Fuller, Administrative Law Judge